



Proposed Enforcement Policy

September 28, 2017
Enforcement Division

Outline

- Overview and Project Goals
- Proposed Enforcement Policy
- Next Steps

Principles of Enforcement

- Public Health and Environmental Protection
- Fairness and Equal Treatment
- Deterrence
- Responsiveness to the Public

Enforcement Goals & Tools

COMPLIANCE



CARB Enforcement

- Broad enforcement program
 - Certification and new product requirements
 - Diesel fleet rules
 - Stationary sources and greenhouses gases
- Enforcement support programs
 - Equipment registration
 - Compliance assistance training
- Public outreach
- Input to regulatory design

Current Penalty Policy

- Developed in 2011
- Describes
 - Enforcement authority
 - Enforcement process
 - Methods to assess penalties

AB1685 (2016)

- Aligns California and Federal penalties for violations of vehicle certification
 - Increases maximum penalties from \$5,000 to \$37,500 per violation
- Provides additional enforcement tools
 - May require payment of penalties as a condition for further sale of vehicles in California
 - May order vehicles to be brought back to certified condition
- Penalties adjust to Consumer Price Index

AB 617 (2017)

- Increases maximum strict liability, civil, and criminal penalties
- Penalties increased from \$1,000 to \$5,000 per violation per day
- Applies to wide variety of violations
 - Stationary sources
 - Greenhouse Gas violations
 - Air Toxics Control Measures
- Penalties adjust to Consumer Price Index

Project Goals

- Update policy in light of increased penalties
- Focus document on policies, and expand policies to cover all enforcement activities
- Improve program transparency
- Provide full public process
- Respond to public comments

Public Process

- Three rounds of public workshops
 - February, July, and August/September
- Working group
 - ~12 attendees from 12 organizations
 - Three meetings in March, June and August

Outline

- Overview and Project Goals
- Proposed Enforcement Policy
- Next Steps

Enforcement Policy Overview

- Fundamental enforcement approach
 - Case by case penalty assessment
- Expanded scope
- Prioritizes cases
 - Emphasizes voluntary disclosure
 - New approach for minor violations
- Establishes on-going public dialog

Enforcement Process

- Consistent with 2011 penalty policy
- Emphasizes communication between staff and the responsible party at all points in the process

Assessing Penalties: The Eight Factors

- Extent of harm to public health, safety, and welfare
- Nature and persistence of the violation
- Compliance history of the defendant
- Preventive efforts taken by the defendant
- Innovative nature and magnitude of effort necessary to comply
- Efforts taken to attain compliance prior to the violation
- Cooperation
- Financial burden

Assessing Penalties: General Considerations

- Describes how relevant facts and circumstances are considered in the context of each case
- Provides deterrence, investigation costs, & litigation risk as general considerations
- Provides range of per unit penalties assessed by program

Enforcement Policy Overview

- Fundamental enforcement approach
 - Case by case penalty assessment
- Expanded scope
- Prioritizes cases
 - Emphasizes voluntary disclosure
 - New approach for minor violations
- Establishes on-going public dialog

Compliance Assistance and Regulation Design

- Provide links to compliance assistance resources
- Discuss the importance of regulation design and effective outreach / implementation to achieving compliance
- Full list of each enforcement program and internet program links

Community Support

- Specific commitments to address environmental justice
 - Outreach to EJ groups and networks to help focus enforcement
 - 50% of mobile source inspections in disadvantaged communities
 - Supporting Cal-EPA multi-media task forces
- Describes complaints program

District Support / Oversight

- Describes CARB enforcement programs focused on stationary sources
- Highlights programs where CARB has delegated enforcement authority through MOU

Public Communication and Information Protection

- Clarifies information clearly subject to disclosure under state law
 - Completed investigation files by request
 - Notices of violation, citations, cease and desist letters by request
 - Settlement agreements posted to website
- Describes information reported annually
- Discusses information protection
 - Confidential business information, attorney-client privilege, and pending, deliberative investigation material

Enforcement Policy Overview

- Fundamental enforcement approach
 - Case by case penalty assessment
- Expanded scope
- Prioritizes cases
 - Emphasizes voluntary disclosure
 - New approach for minor violations
- Establishes on-going public dialog

Focus on Voluntary Disclosure

- Rooted in Cal-EPA criteria for voluntary disclosure
- Penalties may be reduced between 25% and 75% depending on the extent to which factors are met

Minor Violations

- Clarifies that penalties may be reduced for cases that meet criteria
- CARB decides if a violation qualifies as minor
- Penalties for qualifying violations may be reduced by 75% or more depending on several factors

Enforcement Policy Overview

- Fundamental enforcement approach
 - Case by case penalty assessment
- Expanded scope
- Prioritizes cases
 - Emphasizes voluntary disclosure
 - New approach for minor violations
- Establishes on-going public dialog

On-Going Public Dialog

- Staff may periodically hold public meetings to discuss program-specific implementation and enforcement.

Outline

- Overview and Project Goals
- Proposed Enforcement Policy
- Next Steps

Summary and Next Steps

- Finalize and implement the policy
- Continue regular meetings with stakeholders